

Amendment and Response
Serial No.: 09/888,943
Confirmation No.: 9282
Filed: 25 June 2001
For: RESPIRATOR VALVE

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Remarks

The Office Action mailed 8 February 2007 has been received and reviewed. Claims 15 and 28 have been amended, and no claims have been canceled or added. Therefore, claims 15-50 are pending. Reconsideration and withdrawal of the rejections are respectfully requested as discussed below.

Claim Amendments

Claims 15 and 28 have been amended to correct minor typographical errors. Claim 25 has been amended to correct its dependency and provide antecedent basis for "the bias" as recited in claim 25. These amendments are not intended to narrow the scope of the claims, i.e., the scope of the claims is intended to be the same after amendments as it was before. Entry and consideration of these amendments are respectfully requested.

Obviousness-Type Double Patenting Rejections

Claims 15-18, 28, 38, and 48-50 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 13-16 and 26 of Mittelstadt et al. (U.S. Patent No. 6,883,518).

Claims 15, 17-20, and 23-27 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 4-10, 12, and 18 of Mittelstadt et al. in view of Braun (U.S. Patent No. 4,934,362).

Upon an indication of otherwise allowable subject matter and in the event this rejection is maintained, Applicants will provide an appropriate response.

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The 35 U.S.C. § 102 Rejection

Claims 15, 17-32, 34-42, and 44-50 under 35 U.S.C. § 102(b) as being anticipated by Lübeck (German Patent No. 1 213 249). Applicants respectfully traverse this rejection.

For a claim to be anticipated under 35 U.S.C. § 102(b), each and every element of the claim must be found in a single prior art reference (M.P.E.P. §2131). Applicants respectfully assert that Lübeck fails to teach each and every element of the rejected claims.

Claims 28-32, 34-42, and 44-50

Independent claim 28 recites a respirator that includes a unidirectional valve, where the unidirectional valve includes, *inter alia*, a valve flap having a curvature from the first end to the second end when the valve flap is not attached to the valve body, and further wherein at least a portion of the curvature of the valve flap is at least partially flattened when the valve flap seals the valve opening.

Independent claim 38 recites a respirator including, *inter alia*, a unidirectional valve that includes a valve flap including a curvature from a first end to a second end when the valve flap is not attached to the face mask, wherein the curvature of the valve flap is at least partially flattened when the valve flap seals the opening in the face mask.

In addition dependent claims 23-25 also recite that the valve flap includes a curvature that causes a bias of the valve flap toward the valve seat to provide a seal between the valve flap and the valve seat.

Lübeck does not teach valve flaps as recited in independent claims 28 and 38 (i.e., a valve flap having a curvature from a first end to a second end) or dependent claims 23-25 (i.e., valve flap includes a curvature that causes a bias of the valve flap toward the valve seat). Lübeck, instead, clearly teaches a valve flap that has a flat shape. See Lübeck, Figures 1, 5-7.

For at least the reasons presented above, Applicants respectfully submit that independent claims 28 & 38 as well as dependent claims 23-25 are patentable over Lübeck. Applicants further submit that dependent claims 29-32, 34-37, 39-42, and 44-50 are patentable for the

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reasons presented above with respect to independent claims 28 and 38. Reconsideration and withdrawal of this rejection as applied to claims 23-25, 28-32, 34-42, and 44-50 are, therefore, respectfully requested.

Claims 15 & 17-27

Independent claim 15 recites a respirator having a unidirectional valve including, *inter alia*, a valve flap having a contour shape and at least one support element extending from the top surface of the valve flap, wherein the at least one support element provides the contour shape of the valve flap. Figures 6A and 6B of the current application show a few embodiments of a valve flap having a contour shape as claimed. *See also Specification*, page 9, lines 10-16, 28-32, page 10, lines 1-3.

Lübeck does not teach valve flaps as recited in independent claim 15 (i.e., a valve flap having a contour shaped). Lübeck, instead, teaches a valve flap that has a flat shape. *See Lübeck*, Figures 1, 5-7.

Further, Applicants note that Lübeck does not teach a valve flap with at least one support element that provides the contour shaped as recited in independent claim 15. In contrast, the equivalent support elements of Lübeck only support the flat shape of the valve flap. *See Lübeck*, Figures 1, 5-7.

For at least the reasons presented above, Applicants respectfully submit that independent claim 15 is patentable over Lübeck. Applicants further submit that dependent claims 17-27 are patentable for the reasons presented above with respect to independent claim 15. Reconsideration and withdrawal of this rejection as applied to claims 15 & 17-27 are, therefore, respectfully requested.

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The 35 U.S.C. § 103 Rejection

Claims 16, 33, and 43 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Lübeck in view of Japuntich et al. (U.S. Patent No. 5,509,436).

Applicants respectfully traverse this rejection.

"To establish a *prima facie* case of obviousness . . . the prior art references (or references combined) must teach or suggest all the claim limitations." M.P.E.P. § 2143.

As discussed above with respect to the anticipation rejection, at least one feature recited in each of independent claims 15, 28, and 38 is not found in Lübeck. Therefore, Lübeck does not teach or suggest all the claim limitations of dependent claims 16, 33, and 43, which directly depend on independent claims 15, 28, or 38. Further, nothing is identified within Japuntich et al. that remedies the deficiencies of Lübeck that would establish a *prima facie* case of obviousness.

For at least the reasons presented above, Applicants respectfully submit that claims 16, 33, and 43, which directly depend on claims 1, 12, 22, or 31, are patentable over Lübeck in view of Japuntich et al. Reconsideration and withdrawal of this rejection are, therefore, respectfully requested.

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Summary

It is respectfully submitted that the pending claims are in condition for allowance and notification to that effect is respectfully requested. The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted

By

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8 MAY 2007By: Kevin W. Raasch

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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to **Mail Stop Amendment**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 8th day of May, 2007, at 11:54 pm (Central Time).

By: Danielle Morez
Name: Danielle Morez